REMARKS

Applicants elect the claims of Group I, namely, claims 1-6, with traverse. The Examiner has acted upon the merits of this case at least twice before, without requiring restriction. On March 11, 2003, all claims were rejected as being anticipated by Hughes et al. (claims 1-4) or unpatentable over Hughes et al. (claims 5-15). In an Amendment filed September 2, 2003, no changes were made to any of claims 1-15. Applicants argued that Hughes et al. neither anticipated nor suggested the subject matter of claims 1-15.

The Examiner issued a Final Rejection on November 14, 2003, wherein all of claims 1-15 were examined and were rejected as being anticipated by Hughes et al. Though two references were cited, namely Russell-Falla and Humes, they were not relied upon in the rejection of any of claims 1-15.

Applicants submitted an Amendment After Final Rejection on May 10, 2004 seeking reconsideration of the Final Rejection. There was no amendment made to any claims. It was observed by Applicant that Russell-Falla and Humes were not part of the Final Rejection of claims 1-15. These claims were finally rejected solely on Hughes et al.

On July 9, 2004 the Examiner issued an Advisory Action that the reply filed May 10, 2004 failed to place the application in condition for allowance. "Applicants arguments have been fully considered but [ther] they are not deemed to be persuassive."

Subsequently, a Notice of Appeal and an Appeal Brief were filed by applicants. In response to the Appeal Brief, an action was mailed from the PTO on March 31, 2005 stating that the Examiner had "reconsidered and withdrawn the finality of the Office Action under 35 U.S.C. 102(e) rejection because there are two distinct inventions in this instant application."

If restriction were justified, it should have been made as a first Office Action, not as a response to the filing of an Appeal Brief by Applicants. Considerable cost has been unnecessarily incurred by Applicants in preparing and filing both a Notice of Appeal and an Appeal Brief. Considerable time has been unnecessarily spent in prosecution of this application.

Since the finality of the 35 U.S.C. 102(e) rejection was withdrawn, why were no claims allowed?

In effect by withdrawing the final rejection under 35 U.S.C. 102(e) there has been no action on the merits of this application, notwithstanding the filing date of the application being February 14, 2000. This application has been pending more than five years and prosecution is to begin anew with a requirement for restriction. Applicants are entitled to an extension of the patent term of any issuing patent due to failure by the PTO to issue a patent within three years of the filing date of the application. Further applicants should be entitled to an extension of the patent term due to examination delay.

Reconsideration of the requirement for restriction and early issuance of a Notice of Allowance are solicited.

Respectfully submitted,

Date: April 27, 2005

By:_____
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CERTIFICATE OF MAILING

I hereby certify that this paper and its attachments are being deposited with the United States Postal Service on the date shown below with sufficient postage as First Class Mail in an envelope addressed to: Mail Stop AMENDMENT, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 Box , on April 27, 2005.

_____
Seymour Rothstein

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